

Minutes of the Special and Regular Meeting of September 11, 2007

One Twin Pines Lane, Belmont, California

SPECIAL MEETINGS

CLOSED SESSION - 6:05 P.M.

- A. Conference with Labor Negotiator, Jack Crist, pursuant to Government Code Section No. 54957.6: AFSCME and MMCEA
- B. Conference with Legal Counsel, Anticipated Litigation, Significant Exposure to Litigation, Government Code section 54956.9(b), One Case, regarding claim of Schoening et al. re:Marburger Road.
- C. Conference with Real Property Negotiator, Jack Crist, pursuant to G.C. Section 54956.8:
1) Three parcels, APN 045-244-150 and 045-244-160, and 045-244-010, and associated alleyway right-of-way, concerning price and terms of payment; and 2) One parcel, APN 045-380-010, concerning price and terms of payment.

Attended by Councilmembers Dickenson, Feierbach, Mathewson, Warden, Lieberman, City Manager Crist, City Attorney Zafferano, Human Resources Director Sam, Public Works Director Davis, Community Development Director de Melo, and Police Chief Mattei. City Clerk Cook was excused from attending.

ADJOURNMENT at this time, being 7:30 P.M.

Terri Cook

City Clerk

This meeting not tape recorded or videotaped.

REGULAR MEETING

CALL TO ORDER 7:30 P.M.

ROLL CALL

COUNCILMEMBERS PRESENT: Dickenson, Lieberman, Feierbach, Warden, Mathewson

COUNCILMEMBERS ABSENT: None

Staff Present: City Manager Crist, City Attorney Zafferano, Community Development Director de Melo, Police Chief Mattei, Finance Director Fil, Human Resources Director Sam, Public Works Director Davis, Co-Interim Parks and Recreation Director Ourtiague, City Clerk Cook.

PLEDGE OF ALLEGIANCE

Led by Police Department Honor Guard

REPORT FROM CLOSED SESSION

City Attorney Zafferano stated that no action was taken during the Closed Sessions held earlier.

SPECIAL PRESENTATIONS

Remembrance of September 11th - Remarks from the Mayor

Mayor Feierbach made brief remarks regarding the sixth anniversary of the events of September 11, 2001, and noted that day-to-day activities of public safety personnel are often taken for granted.

Police and Fire Department Commendations

Police Chief Mattei noted that the police department engages in acts of heroism on a daily basis. He described an incident in February of 2007 where Andre Moniot, a Public Works Department employee, was first to arrive on a vehicular accident, and he and Officer Bradshaw put their own lives in danger to remove an unconscious victim from a burning vehicle.

Police Chief Mattei presented commendations to both gentlemen. He noted that as a result of his participation in this incident, Mr. Miniot has entered the Sheriff's Academy to pursue a career in law enforcement.

Battalion Chief Gaffney, on behalf of Fire Chief Fry, described another incident in which Sean Wilkerson, an off-duty firefighter, the first to arrive on the scene of a house fire, entered the building and rescued a victim.

Mayor Feierbach noted that both departments have heroes. She thanked all those involved in these individual acts of heroism, and thanked public safety and other staff for their contributions to the organization.

PUBLIC COMMENTS AND ANNOUNCEMENTS

Ron Denman, Chamber of Commerce President, thanked the City for its involvement in the new directory, which had just been produced and will be delivered to all single-family homes. He announced that the Chamber would be holding a "Doing Business in Belmont Seminar" on September 13th, a Chamber mixer later that day, and that the Save the Music event would be held in Twin Pines Park on Sunday, October 14th.

COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS

Councilmember Lieberman announced that the Belmont Blast Softball team placed 16th at the recent Western National Championship. He announced the names of the players and coaches, and noted that they were present in the audience this evening.

RECESS: 8:00 P.M.

RECONVENE: 8:07 P.M.

CONSENT CALENDAR

Acceptance of Written Communication: 1) Received August 24, 2007, In Re US Bankruptcy Court, District of Delaware, Chapter 11 filing for New Century TRS Holdings., Inc.

Acceptance of One-Year Status Report on Belmont Library Parking

Approval of Resolution 9912 Responding to Grand Jury Recommendations Regarding Emergency Planning for Dam or Levee Failures

Approval of Resolution 9913 Responding to Grand Jury Recommendations Regarding Electronic Communications

Approval of Resolution 9914 Authorizing an Amendment to Extend Insurance Brokerage Agreement with Driver Alliant in the Amount of \$75,000 for FY08 and \$80,000 for FY09.

Approval of Resolution 9915 Implementing a Master Revenue Schedule

Approval of Resolution 9916 Authorizing New Classifications and Salary Ranges for Recreation Manager and Park Manager Positions

Approval of Resolution 9917 Authorizing New Classification and Salary Range for Assistant Planner Position.

Acceptance of Reauthorization of the League of California Cities Grassroots Regional Network Report

ACTION: On a motion by Councilmember Lieberman, seconded by Councilmember Mathewson, the Consent Agenda was unanimously approved by a show of hands.

HEARINGS

Public Hearing to Consider an Ordinance Regulating Secondhand Smoke and Amending the Belmont Municipal Code

City Attorney Zafferano outlined the issues addressed in the proposed ordinance. He noted that the City's smoking ordinance was last updated 15 years ago. He stated that other cities have begun to address similar issues with their own ordinances. The purpose of a smoking ordinance is to protect health and well being. He outlined the areas where smoking would be prohibited under the proposed ordinance, including multi-unit, multi-story housing, and he reviewed where smoking would be permitted. He also outlined the dates as to when provisions of the ordinance would become effective.

City Attorney Zafferano provided information regarding enforcement, and outlined the various tools available when the City becomes involved in enforcement. He noted that the goal is compliance, not punishment. He proposed that the City initiate an education program should the ordinance be adopted.

Mayor Feierbach opened the Public Hearing.

Loring DeMartini, Belmont business owner, stated he is a nonsmoker, but that smokers have rights. The proposed ordinance is a violation of property owner rights, and is a life-changing ordinance which affects many people. He suggested that it be applied only to new construction. This is not a good way to promote a connection to businesses and residences. He recommended the City allow businesses to self-regulate. The ordinance creates a disparity between leased properties and single-family homes. The power is in the wrong hands for enforcement. The intention is good, but the issue has snowballed. Three votes could change the lives of people in Belmont, and he recommended this issue be put to a vote of the people.

Pat Dixon, Redwood City resident, stated that people who smoke in their cars should be required to use their ashtray. Some people are severely allergic to cigarette smoke. She supports the ordinance, and noted that other cities will likely follow suit should this ordinance be adopted.

Ralph Morales, American Lung Association, noted that children are more affected by second-hand smoke than adults. He noted that since Dublin adopted its ordinance last year, only three complaints have risen to the City staff level, and others have been addressed in small claims court. He noted his organization offers support for smoking cessation.

Margaret Hodge, New Mexico resident/sister of Ray Goodrich, commended the Council for undertaking this issue.

Jean Sherwin, Belmont resident, stated that smoke permeates her apartment. She recommended that 30 feet be designated as the safe distance for smokers.

Becky Husman, on behalf of some residents at Bonnie Brae Terrace, stated that although the proposed ordinance is not perfect, she supports its adoption. She noted that those corresponding with the City Council regarding this matter may not have understood the scope of the ordinance and may have been reacting to a stricter version, which may account for the higher number of those voicing opposition.

Mark Korwald, Belmont resident, stated that nonsmokers also have rights, and currently have no recourse if affected by second-hand smoke. He noted that the smoking prohibition in restaurants has

not hurt that industry. He also noted that smokers would still be able to smoke under the provisions of the proposed ordinance.

Ron Henderson, Belmont resident, stated he is a property owner and a nonsmoker. He expressed concern that this ordinance could be enacted with only three votes, and recommended the matter be put to a vote of the people. This could create problems between neighbors. He recommended educating, not legislating.

Diane Kizeer, California Clean Air Project (CCAP), noted that her organization could assist with signage, seminars for apartment owners, and cessation programs. It assisted with creating smoke-free bars, which has achieved a 96 percent compliance rate. Smoke-free environments protect employees.

Doug Mottern, Belmont business owner, requested an exemption for the back patio of his restaurant. He is concerned that his establishment sits on the border with San Carlos, which does not have a similar ordinance in place.

City Attorney Zafferano noted that St. James Gate would be affected by the ordinance as proposed.

Michelle Loya-Talamantes, Breathe California, stated there is no safe level of exposure to second-hand smoke. She supports the ordinance as proposed. She reviewed the services provided by her organization. She noted that the primary complaints they receive is from apartment dwellers.

Dave Bauer, Belmont resident, expressed concern regarding infringement this ordinance would have on personal liberties. He noted he is not a smoker and does not like cigarette smoke.

Michon Coleman, San Mateo County Association of Realtors (SAMCAR), noted that her organization was opposed to the ordinance. It infringes on private property rights and proposes to regulate a legal activity. There are ownership rights, regardless of the type of ownership.

Mayor Feierbach noted that the mailer sent by SAMCAR was a fear piece, and it should have also been sent to apartment dwellers. She noted the ordinance will not be enforced through fear.

Ms. Coleman responded that SAMCAR was attempting to inform owners regarding the proposed ordinance. She clarified that SAMCAR represents owners, not tenants.

Joshua Howard, Tri-County Apartment Association, requested alternatives to the proposed ordinance. He noted that the regulation of smoking in apartment buildings should be voluntary on the part of apartment owners.

ACTION: On a motion by Councilmember Mathewson, seconded by Councilmember Warden, the Public Hearing was unanimously closed by a show of hands.

In response to Mayor Feierbach's concern regarding St. James Gate, City Attorney Zafferano clarified that the back patio of this establishment is a work place and is within 20 feet of a doorway. Smokers at this restaurant would need to go to the front sidewalk. He noted that you cannot distinguish between front and back outdoor eating areas, and you cannot treat them differently. He clarified that State regulations only address indoor work places.

Councilmember Warden noted that the City has a noise ordinance to address noise affecting others, and the issue before the Council is establishing a mechanism to address second-hand smoke. The intent is not to punish, and the intent is to stop drifting smoke, not to stop smoking. He noted that many people have no options available to address any issue they have with smoke.

Councilmember Dickenson reviewed the public process relative to this matter. He noted that the most vocal people have been nonsmokers. He expressed concern regarding telling businesses how to run their business via legislation. He would prefer education rather than legislation.

Councilmember Mathewson noted this is a health and safety issue, and he supports the proposed ordinance.

Councilmember Lieberman concurred that the intent of this issue is to address second-hand smoke. He does not support the ordinance as proposed and would prefer an alternate approach. He noted that the intent is that this matter be complaint-driven, but the ordinance provides that landlords can evict

tenants for noncompliance. He does not want people to lose their homes. The ordinance is too complicated as presented.

City Attorney Zafferano noted that the eviction language is taken from a voluntary lease provision already provided to landlords.

Mayor Feierbach commented regarding the inflammatory flyer sent by the San Mateo County Association of Realtors. The ordinance addresses second-hand smoke. It is intended to be complaint-driven, but not many will complain. She supports a long phase-in period for leases. Activities that people engage in affect their neighbors. Children will be affected, as will those with lung and/or heart issues. The Council has a right to enact ordinances that address health and safety issues. Smoke has no barriers. Apartment and condo dwellers have issues with drifting smoke from their neighbors. The right to clean air supersedes the rights of smokers. She recommended a one-year review of this ordinance once it is adopted.

Councilmember Lieberman responded that he concurs that children should be protected, but an ordinance is not the only way in which to accomplish this. He noted that the ordinance proposes to be complaint-driven, but provides for eviction. He does not want people to lose their homes. It is appropriate to strengthen the ordinance, but he does not support the proposed amendment as it is too complicated.

City Attorney Zafferano noted that the clause for lease agreements is a current voluntary provision provided by the apartment association.

ACTION: Councilmember Mathewson made a motion, seconded by Councilmember Warden, to introduce the ordinance as proposed, with a one-year review.

Councilmember Dickenson proposed an amendment to grandfather in St. James Gate and Marvin Gardens' outdoor patio area. He noted that he cannot support the ordinance as proposed.

Councilmember Lieberman stated that current businesses are at risk, and people will complain.

Councilmember Warden stated that ordinances are often modified.

ACTION: On the original motion to introduce the ordinance as proposed, waive further reading, and set second reading and adoption for September 25, 2007, was passed by a roll call vote (3-2, Dickenson, Lieberman no).

RECESS: 9:35 P.M.

RECONVENE: 9:45 P.M.

OLD BUSINESS

Resolution Authorizing Award of Bid to Hunter Construction for Tenant Improvements on City Hall Suites 104 and 105 for an Amount Not to Exceed \$62,260 and Confirmation on Leasing Approach (continued from 8/14/07)

Finance Director Fil reviewed the physical issues regarding these two suites located in City Hall, and noted that both needed remodeling in order to make them habitable for tenants. The proposal is for the two units to share restrooms, but each would contain separate common areas in order to provide the most flexibility for a tenant. He noted that the current condition is a result of the City Hall remodel. He stated that staff was also seeking direction regarding leasing of this space.

Mayor Feierbach expressed concern regarding a long-term lease of these units, as space may be needed for City purposes in the future. Finance Director Fil responded that the lease for the existing tenant expires in 2008. The new suites could be leased with shorter terms and shorter extension options.

Councilmember Warden stated he would prefer a government agency as a tenant, rather than lease the space to the highest bidder. Councilmembers Lieberman and Mathewson concurred.

ACTION: On a motion by Councilmember Mathewson, seconded by Councilmember Dickenson, Resolution 9918 Authorizing Award of Bid to Hunter Construction for Tenant Improvements on City Hall Suites 104 and 105 for an amount not to exceed \$62,260 was unanimously approved by a show of hands.

Resolution Amending the Master Fee Schedule Regarding Photovoltaic (Solar Panel Permit) Fees
(continued from 8/14/07)

Community Development Director de Melo outlined the fiscal impact of eliminating permit fees for solar installations. He noted that when the fees were reduced, activity increased.

Councilmember Mathewson noted that there is likely to be an increased number of applications should the fee be eliminated.

Christine Wozniak, Belmont resident, supports elimination of the fee, but expressed concern regarding the resulting increased number of permits. She recommended a one-year review. She noted that the General Plan does not address green issues, but should with the pending update, as this should be a value for Belmont.

Councilmember Dickenson stated that elimination of the fee will encourage participation, and is a small impact.

Councilmember Lieberman expressed concern regarding fiscal impact. He recommended tracking the number of applications and amount of staff time regarding quality of applications. He suggested a six-month review.

Mayor Feierbach expressed concern regarding other types of green issues and provisions for free inspections. She is also concerned with the quality of applications, and recommended a six-month review.

Councilmember Warden stated there are not many options regarding full renewable energy sources. He noted that other cities are lowering or eliminating their solar fees. It will enable people to get off the electric grid, and there are other benefits such as improved air quality.

Councilmember Mathewson stated he supported lowering the fee, but expressed concerns regarding staff impact. He cannot support the proposal to eliminate the fee.

Councilmember Warden suggested a two-tier system where people either pay the fee for expedited service, or wait for their permit if they wish to have the fee waived.

ACTION: On a motion by Councilmember Lieberman, seconded by Councilmember Warden, Resolution 9919 Amending the Master Fee Schedule Regarding Photovoltaic (Solar Panel Permit) Fees was approved by a show of hands (Mathewson no).

MATTERS OF COUNCIL INTEREST/CLARIFICATION

Consideration of amending stipend/benefits for City Treasurer to match those provided to City Council Members (Mathewson)

Councilmember Mathewson stated that the City Treasurer has a high level of responsibility, but he is currently not receiving the same benefits as the City Council.

Council concurred to place this item as a resolution on the next consent calendar, and to include a fiscal impact.

Consideration of ordinance addressing abandoned shopping carts (Dickenson)

Councilmember Dickenson noted that this issue has been addressed by the Planning Commission in the past. At one time Safeway discontinued collecting abandoned shopping carts. He noted there has been a recent issue of carts abandoned in neighborhoods.

City Attorney Zafferano stated that he has a list of pending ordinances that need to be addressed, and this issue could be added to that list. Council concurred.

Options regarding Pedestrian/Bike Bridge over Highway 101 (Dickenson)

Councilmember Dickenson stated that he wished to offer an option to make the Highway 101 crossing safer for pedestrians and bicyclists. He clarified that he does not wish to detract from the pending bike bridge.

Mayor Feierbach concurred that the highway crossing needs to be safer for children.

Councilmember Warden stated that consideration was given for including a bike/pedestrian lane in the median of the newly configured highway crossing, but the City had no money for the project. Grant monies have been accumulating for the bike bridge, and he expressed concern that pursuing other options may disrupt that process. The bridge is a good solution as it separates vehicular traffic from bikes and pedestrians. He noted that bicyclists do not like medians on highway crossings, and it does not solve the original problem. He would support a contingency plan in the event the bike bridge funding becomes problematic.

Councilmember Dickenson stated that C/CAG monies may be available for options. Councilmember Mathewson responded that the bike bridge is at the top of the list for funding, and it could lose its place on that list if other options are pursued.

Public Works Director Davis noted that Belmont's bike/pedestrian bridge is the top project in the pedestrian plan for San Mateo County. The design has been approved by Cal Trans, and monies have been designated. If a median bike/pedestrian lane were to be installed, a traffic lane would need to be removed, and there may not be an engineering solution. New monies from Measure A will be allocated in the spring of 2008.

Councilmember Lieberman recommended putting this issue on hold until June.

Councilmember Dickenson stated that the bike/pedestrian bridge will still need to compete with other cities for Measure A monies.

Mayor Feierbach concurred to wait, but desires to look at other ways to make the area safer in the meantime.

Council concurred to wait until after the spring Measure A allocation process.

Consideration of a ban on animals in city buildings (including the library), except Police dogs and service animals (Feierbach)

Mayor Feierbach stated that animals do not belong in City facilities, and recommended a ban.

Councilmember Mathewson stated that he supports a ban, and thought there was already one in existence.

Councilmember Lieberman stated this is not a policy issue but an operational issue, and that this matter should be referred to staff.

City Manager Crist stated that Cities usually discourage animals from City facilities, and he noted this is not a serious issue.

Councilmember Dickenson stated that he may have overstepped bounds by bringing his dog to visit staff in City Hall.

Councilmember Warden noted that if employees cannot bring animals, Councilmembers should not.

Councilmember Mathewson expressed concern regarding allergies, but that staff members may not be comfortable saying anything if a Councilmember brings a pet to City Hall.

MEETING EXTENSION: At this time, being 10:30 P.M., on a motion by Councilmember Mathewson, seconded by Councilmember Lieberman, the meeting was unanimously extended to 11:00 P.M. by a show of hands.

Public office candidates should be required to disclose length of residency, education, prior community involvement, and criminal record history (pending, current, and expunged) upon filing (Warden)

Councilmember Warden expressed concern that two of the Council candidates are new to Belmont and nothing is known of their background. He noted that background information is asked of commission members. He stated that the City Attorney has suggested that such disclosure be voluntary only. He would like the Attorney General's opinion regarding this issue.

City Attorney Zafferno clarified that the State Elections Code sets forth the requirements for candidates for local office. This could be a potential first amendment issue to compel speech.

Councilmember Lieberman stated there are other pressing issues, and the process should be left as is. He commented that you should not vote for someone if you do not have enough information.

Councilmember Dickenson stated he would support requesting background information on a voluntary basis. He noted that this kind of information can be requested during candidate forums.

ADJOURNMENT at this time, being 10:35 p.m.

Terri Cook

City Clerk